

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

BENJAMIN HORTON,

Plaintiff,

v.

9:22-CV-0906
(BKS/CFH)

JOHN DOE,

Defendant.

APPEARANCES:

BENJAMIN HORTON

Plaintiff, *pro se*

16-A-3539

Clinton Correctional Facility

P.O. Box 2000

Dannemora, New York 12929

CHRISTIAN F. HUMMEL

United States Magistrate Judge

ORDER

Plaintiff Benjamin Horton ("plaintiff") commenced this action by filing a pro se civil rights complaint pursuant to 42 U.S.C. § 1983 ("Section 1983"), together with an application to proceed in forma pauperis ("IFP"). Dkt. No. 1 ("Compl."), Dkt. No. 3 ("IFP Application"). On March 27, 2023, plaintiff filed an amended complaint. Dkt. No. 16. In a Decision and Order filed on April 20, 2023 (the "April Order"), the Court found that plaintiff's Eighth Amendment claim against defendant Officer Doe, whose identity was not known, survived review and required a response. Dkt. No. 17. The Court instructed the Clerk of the Court to send a copy of the amended complaint and the April Order to the Office of the

Attorney General. *Id.* at 10. The Attorney General's Office was instructed to attempt to ascertain the identity of the defendant and an address where he could be served and to provide that information. *Id.*

On May 3, 2023, the Attorney General's Office responded to the April Order. Dkt. No. 19. In an Order filed on May 11, 2023 (the "May Order"), the Court directed the Clerk of the Court to forward a copy of the response to plaintiff. Dkt. No. 22. Plaintiff was directed as follows:

It is ordered that plaintiff has thirty days from the date of this Order to file an amended complaint that correctly identifies Officer John Doe, in his complaint. In an effort to assist plaintiff in drafting the proposed amended complaint, the Clerk shall forward to plaintiff a copy of his complaint (Dkt. No. 1). Plaintiff may identify the Doe defendant by handwriting the name in the appropriate locations throughout on the copy of the complaint and indicate in the caption of the document that it is the amended complaint. Once plaintiff has made these changes to the copy of the operative pleading, captioned it as his amended complaint, and signed the proposed pleading, he should submit it to the Court for review.

Dkt. No. 22.

On August 16, 2023, plaintiff submitted a second amended complaint in accordance with the May Order.¹ Dkt. No. 25. Upon review, the second amended complaint is accepted for filing and is the operative pleading in this action.

WHEREFORE, it is hereby

ORDERED, that the second amended complaint (Dkt. No. 22) is **ACCEPTED** for filing and is the operative pleading in this action; and it is further

ORDERED, that the Clerk shall revise the docket to add Mark Secore in the place of

¹ Because defendant has not yet responded, the pleading was filed as of right pursuant to Rule 15(a).

defendant John Doe; and it is further

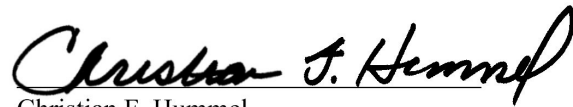
ORDERED, that the Clerk shall issue summons and forward it, along with copies of the second amended complaint, to the United States Marshal for service upon the defendant. The Clerk shall forward a copy of the summons and second amended complaint to the Office of the Attorney General, together with a copy of this Decision and Order; and it is further

ORDERED, that a response to the second amended complaint be filed by the defendant, or his counsel, as provided for in the Federal Rules of Civil Procedure;

ORDERED, that all pleadings, motions and other documents relating to this action must bear the case number assigned to this action and be filed with the Clerk of the United States District Court, Northern District of New York, 7th Floor, Federal Building, 100 S. Clinton St., Syracuse, New York 13261-7367. **Any paper sent by a party to the Court or the Clerk must be accompanied by a certificate showing that a true and correct copy of same was served on all opposing parties or their counsel. Any document received by the Clerk or the Court which does not include a proper certificate of service will be stricken from the docket.** Plaintiff must comply with any requests by the Clerk's Office for any documents that are necessary to maintain this action. All parties must comply with Local Rule 7.1 of the Northern District of New York in filing motions. **Plaintiff is also required to promptly notify the Clerk's Office and all parties or their counsel, in writing, of any change in his address; their failure to do so will result in the dismissal of his action;** and it is further

ORDERED, that the Clerk of the Court shall serve a copy of this Decision and Order on plaintiff in accordance with the Local Rules of Practice.

Dated: October 2, 2023
Albany, New York

A handwritten signature in black ink, reading "Christian F. Hummel". The signature is written in a cursive style with a horizontal line underneath the name.

Christian F. Hummel
U.S. Magistrate Judge